SUPREME COURT, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	
Original Proceeding Pursuant to C.R.S. § 1-40-102(2) Appeal from the Ballot Title Board	~~DATE FILED~~ May 7, 2026 4:59 PM
In the Matter of the Ballot Title of Proposed Initiative 2025-2026 #325 **CURTIS HUBBARD,** Petitioner, v. **KATHLEEN CHANDLER** and **RICK ENSTROM,** Respondents, and **COLORADO BALLOT TITLE SETTING BOARD**: Michael Dohr, Theresa Conley, and Kurt Morrison **Respondents**.	▲ COURT USE ONLY ▲
Attorneys for Respondents: Scott E. Gessler (28944) Geoffrey N. Blue (32684) Gessler Blue LLC 7350 E. Progress Place, Suite 100 Greenwood Village, CO 80111 Tel. (720) 839-6637 or (303) 906-1050	Case Number: 2026SA151

RESPONDENT'S OPENING BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

X It contains 2,355 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

X **For each issue raised by the appellant**, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

s/Scott E. Gessler
Scott E. Gessler

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I. INTRODUCTION

This proposed initiative 2025-2026 #325 sets forth new redistricting criteria for congressional district maps. In that respect, it is identical to Proposed Ballot Initiatives 2025-2026 #324 and #326. All three set forth new criteria for congressional redistricting, although the exact criteria vary among the three proposed initiatives. Procedurally, the Petitioner in this matter has also sought review of Initiatives 324 (Case No. 26SA149) and 326 (Case No. 26SA152). Importantly, his three petitions set forth the *exact same* issues for review. Accordingly, the arguments in this *Opening Brief* are identical to the arguments in the Opening Briefs in Initiatives 324 and 326.

II. ISSUES PRESENTED FOR REVIEW

A. The proposed initiative creates new redistricting criteria for congressional maps. The Petitioner claims that these new criteria also restrict the right to initiative, legislators' privileges under the speech and debate clause, and the right to free speech and assembly. Are these "restrictions" effects of the initiative appropriate for review at this stage?

B. Even if this Court decides to consider the purported "restrictions," does the initiative in fact restrict rights as a matter of law, and if so, are those restrictions necessarily and properly connected to criteria for congressional redistricting?

C. The title and submission clause states that the initiative prohibits maps "created with" partisan data. Should this Court defer to the Title Board's use of the

phrase "created with" to accurately capture one of the central initiative's central provisions, or did the Title Board create a misleading and unfair title by not including the phrase "influenced by" partisan data?

III. NATURE OF THE CASE

This case is an appeal of the Title Board's recent decision to set a title and submission clause for Proposed Ballot Initiative 2025-2026 #325.

Proponents Chandler and Enstrom (the "Proponents") submitted Proposed Initiative #325 to the General Assembly's Legislative Council Staff and Office of Legislative Legal Services ("OLLS") General Assembly.

On April 3, 2026, the Proponents submitted the measure to the Title Board, and on April 15, 2026, the Title Board, by a 3-0 vote, found that the measure contained a single subject and proceeded to set a title and submission clause. It also found that the proposed initiative requires additional language to the Colorado Constitution: "The requirement for approval by fifty-five percent of the votes cast applies to this initiative." Petitioner Hubbard filed a *Motion for Rehearing*, challenging the Board's single subject determination, the Board's finding that the measure does not add to the Colorado Constitution, and the accuracy of the ballot title and submission clause.

Proponents Chandler and Enstrom filed a *Motion for Rehearing* as well as Petitioner Hubbard. The Title Board reconsidered the measure on April 23, 2026. The

Board granted the *Motion for Rehearing* by a 3-0 vote, only to the extent the Board made changes to the title.

Petitioner Hubbard appealed on April 30, 2026.

IV. SUMMARY OF ARGUMENT

The initiative has one subject—redistricting criteria for congressional maps. The Petitioner argues that the initiative also (1) restricts the right to initiative, (2) restricts legislators' rights under the Speech and Debate Clause, and (3) restricts free speech and assembly. But these are purported effects of the initiative, which have no bearing on the initiative's single subject and are not appropriate for review at this stage. Furthermore, claims that the initiative restricts rights and privileges is wrong as a matter of law. And in any event, a supposed "restriction" is necessarily and properly connected to the subject of congressional redistricting criteria.

The title and submission clause states that the initiative prohibits maps "created with" partisan data. This captures one of the initiative's central features, and the title need not included the phrase "influenced by." That phrase is redundant, and it adds unnecessary detail, length, and complexity. This Court should defer to the Title Board's decision.

V. STANDARD OF REVIEW AND PRESERVATION OF ISSUES

In reviewing Title Board action, this Court "draw[s]" all legitimate presumptions in favor of the propriety of the Title Board's decision and will only

overturn the Board's decision in a clear case.[1] At the same time, this Court's "deference . . . is not absolute; [it has] an obligation to examine the initiative's wording to determine whether it comports with the constitutional requirements."[2] "In conducting this limited inquiry, [this Court] employ[s] the general rules of statutory construction and give words and phrases their plain and ordinary meaning."[3]

The issues in this appeal were set forth and preserved in Petitioner Hubbard's *Motion for Rehearing*.

VI. ARGUMENT

A. The proposed initiative's effects on other constitutional provisions do not form separate subjects.

The measure creates new redistricting criteria that apply to any future Congressional maps drawn by the Colorado Independent Redistricting Commission, the General Assembly, or ballot initiative proponents. The Petitioner argues that the measure contains multiple subjects because in addition to changing the criteria for Congressional redistricting maps, the initiative also: (1) restricts voters' access to the

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[1] S*mith v. Hayes (In re Title, Ballot Title & Submission Clause for 2017-2018 #4)*, 2017 CO 57, 20.

[2] *Fine v. Ward (In re Titles, Ballot Titles, & Submission Clauses for Proposed Initiatives 2021-2022 #67, #115, & #128)*, 2022 CO 37, ¶ 9 (internal quotations and citations omitted).

[3] *Johnson v. Curry (In re Title, Ballot Title, & Submission Clause for 2015-2016 #132)*, 2016 CO 55, ¶ 11.

right to initiative; (2) restricts legislators' rights under the Speech and Debate Clause; and (3) restricts rights on free speech and assembly.

But the proposed initiative does not in any way address the right to initiative, the Speech and Debate Clause, or free speech and assembly. Indeed, the plain language of the initiative only addresses redistricting criteria. But instead of focusing on any particular clause within the initiative that addresses one of those topics, the Petitioner claims that the *effect* of the initiative will be to restrict these three rights. In other words, he claims that as a result of the initiative, voters, legislators, and Coloradans in general will face restrictions on various activities. These arguments fail, because claims about the effects the initiative will have on other constitutional provisions and laws are not appropriate for review in this appeal from Title Board action.

In reviewing the Title Board's actions, this Court "does not address the merits of the proposed initiatives"[4] and has "never held that just because a proposal may have different effects it necessarily violates the single- subject requirement. Indeed, the effects this measure could have on Colorado law if adopted by voters are irrelevant to [the Court's] review of whether the proposed initiative and its Titles contain a single subject."[5] Even if the Petitioner were correct (which he is not) that

[4] *In re Title, Ballot Title & Submission Clause for 2013-2014 #90*, 2014 CO 63, ¶ 9.

[5] *Id.,* at ¶ 17 (internal citations omitted).

the new initiative would restrict certain rights and activities, it does not affect whether the initiative contains a single subject. For this reason alone, this Court should summarily affirm the Title Board's action.

B. As a matter of law, the initiative does not conflict with other constitutional provisions and therefore does not contain multiple subjects.

Even if the Court were inclined at this point to consider the Petitioner's objection to the Title Board's single-subject determination, the Petitioner's characterizations of the initiative's effects are wrong, as a matter of law.

First, the new redistricting criteria would not in any way restrict the right to initiative. Upon enactment of the initiative, any two proponents would continue to have the right to propose and qualify for the ballot initiatives that creates new congressional maps. If an initiative were a statutory initiative, it would be required to adhere to the redistricting criteria in the Colorado constitution. This would be no different than any statutory initiative that must comport with constitutional requirements. Alternatively, if the proponents did not want to adhere to the constitutional criteria, they could propose and seek approval of new map to be placed within the Colorado Constitution itself. Or they could seek to repeal or amend the redistricting criteria within the Colorado Constitution. The new redistricting criteria in no way alter Colo. Const. art. V, § 1(1), under which the right of initiative of and referendum are reserved to the people of Colorado.

Second, the new redistricting criteria do not affect in any way legislators' protections under the Speech and Debate Clause in Colo. Const. art. V, § 16, which states:

> The members of the general assembly shall, in all cases except treason or felony, be privileged from arrest during their attendance at the sessions of their respective houses, or any committees thereof, and in going to and returning from the same; and for any speech or debate in either house, or any committees thereof, they shall not be questioned in any other place.[6]

This provision "plainly protects legislators from inquiry into legislative acts or their motives for performing them."[7] The new redistricting criteria would not alter Section 16 in any manner, nor would legislators in face liability for any comments they might make concerning redistricting criteria. Indeed, legislators could denounce the new criteria, create a new map that violates those criteria, or seek to amend the criteria, all while receiving full protection under the Speech and Debate Clause.

Third, all Coloradans would retain their First Amendment rights to free speech and assembly. The redistricting criteria do not restrict the rights of anyone to discuss or speak congressional maps. The new redistricting criteria would prohibit the enactment of maps that were created by partisan considerations, but that would be no different than current equal protection rights under the U.S. Constitution that prohibit redistricting maps to be based on racial discrimination. Currently, the U.S.

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[6] Colo. Const. art. V, § 16.

[7] *Romer v. Colorado Gen. Assembly*, 810 P.2d 215, 222 (Colo. 1991).

Constitution prohibits racial gerrymanders. The new redistricting criteria would prohibit (or greatly limit) partisan gerrymanders. In neither instance do those redistricting criteria restrict First Amendment rights to free speech and assembly.

C. Any effect on rights or privileges is necessarily and properly connected to the subject of congressional redistricting.

Finally, even if this Court were to consider the effects of the initiative, and even if this Court were to lend credence to the Petitioner's claims that the initiative restricts rights and privileges, any "restriction" (as characterized by the Petitioner) is necessarily and properly connected to the initiatives redistricting requirements. "A proposed initiative presents only one subject if it tends to effect or carry out one general objective or purpose; minor provisions necessary to effectuate the single objective or purpose of the initiative may be properly included."[8]

Here, any effects are necessarily and properly tied to the subject of redistricting criteria. To the extent the initiative limits any person's rights or privileges, that limitation itself is very constrained—it only applies to topics that would conflict with the new redistricting criteria. And because the scope of the initiative is limited to redistricting criteria, the initiative cannot restrict any rights or privileges that are not necessarily and properly connected to the subject or congressional redistricting criteria.

D. The phrase "created with" captures a central provision of the proposed initiative.

[8] *In Matter of Title, Ballot Title*, 2016 CO 55, ¶ 15.

Here, the ballot title and submission clause states:

> Shall there be an amendment to the Colorado Constitution changing congressional redistricting criteria, and, in connection therewith, repealing the requirement that the congressional redistricting maps maximize the number of politically competitive districts and preserve whole communities of interest; prohibiting a redistricting map that is created with partisan voter registration data or partisan electoral performance, and instead creating seven new geographic communities of interest, consisting of 50 of the 64 Colorado counties; and requiring any maps created by the congressional redistricting commission, the state legislature, or citizen initiative to use United States citizen population data, if available, and specified priorities to keep counties, cities, and geographic communities of interest together as much as possible?

The Petitioner argues that the clause is incomplete, because it states the initiative prohibits a map "that is created with partisan voter registration data or partisan electoral performance" but does not state that it prohibits a map "influenced by" such information.

When reviewing a ballot title and submission clause, this Court does not "consider whether the Title Board set the best possible title."[9] Further, "[t]he Title Board's duty in setting a title is to summarize the central features of a proposed initiative,"[10] and the Board "is given discretion in resolving interrelated problems of length, complexity, and clarity in setting a title and ballot title and submission

[9] *In re Title, Ballot Title & Submission Clause for 2019-2020 #3*, 2019 CO 107, ¶ 17.

[10] *In re Title, Ballot Title & Submission Clause for 2013-2014 #90*, ¶ 24.

clause."[11] The Court will reverse the title set by the Board "only if a title is insufficient, unfair, or misleading."[12] "The Title Board is not required to set out every detail of an initiative."[13]

Here, the Title Board exercised its discretion to craft a title and submission clause that avoids "public confusion," is "brief" and "unambiguously states the principle of the provision sought to be added, amended, or repealed."[14] The clause that the initiative prohibits maps that are "created with" partisan data captures a central provision of the initiative. Indeed, in this context the phrases "created with" and "influenced by" substantially overlap. For example, a map that is "created with" partisan data can properly be characterized as "influenced by" partisan data. Thus, adding the phrase "influenced by" to the title adds unnecessary detail, length, and complexity. The phrase "created with" is sufficient. It is fair, and it does not mislead voters. Accordingly, this Court should defer to the Title Board's discretion.[15]

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[11] *Id.*

[12] *Id.,* ¶ 8.

[13] *In re Title, Ballot Title, & Submission Clause for 2007-2008 #62*, 184 P.3d 52, 60 (Colo. 2008).

[14] C.R.S. §1-40-106(3)(b).

[15] *In re Title, Ballot Title, & Submission Clause for 1999-2000 #256*, 12 P.3d 246, 255 (Colo. 2000).

VII. CONCLUSION

This Court should affirm Title Board's determination that it has jurisdiction to set a ballot title and submission clause, and it should affirm the clause set by the Title Board.

Respectfully submitted this 7th day of May 2026,

GESSLER BLUE LLC

s/ Scott E. Gessler
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CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2026, I electronically filed the foregoing with the Clerk of the Court using the CCES system, which notified all parties and their counsel of record.

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